

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSE RAFAEL CASTRO-LINO,

Petitioner,

v.

RON HAYNES,

Respondent.

CASE NO. C19-5405 BHS-JRC

ORDER ADOPTING REPORT
AND RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of the Honorable J. Richard Creatura, United States Magistrate Judge, Dkt. 35, and Petitioner Jose Rafael Castro-Lino’s (“Petitioner”) objections to the R&R, Dkt. 36.

On May 28, 2020, Judge Creatura issued the R&R recommending that the Court deny Petitioner’s motion to stay and abey his petition to exhaust claims in state court. Dkt. 35. On June 9, 2020, Petitioner filed objections. Dkt. 36. On June 11, 2020, the State responded. Dkt. 37.

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions. Fed. R. Civ. P. 72(b)(3).

In this case, Petitioner argues that it is possible that a Washington court could

1 allow him the opportunity to exhaust his claims. Dkt. 36 at 1–2 (citing *Matter of Jeffries*,
2 114 Wn.2d 485, 487 (1990); *In re Pers. Restraint Petition of Vazquez*, 108 Wn. App. 307,
3 314 (2001)). While Petitioner is correct that Washington courts will entertain second and
4 successive petitions on issues that could have been raised in a previous petition, the
5 petitioner must show “good cause” for his failure to include the issue in the previous
6 petition. *See, e.g., Vazquez*, 108 Wn. App. at 314 (“the defendant is barred by RCW
7 10.73.140 from filing successive petitions without good cause.”). When considering a
8 stay and abey order, the Court must also consider good cause. *Rhines v. Weber*, 544 U.S.
9 269, 277 (2005) (“stay and abeyance is only appropriate when the district court
10 determines there was good cause for the petitioner's failure to exhaust his claims first in
11 state court.”). Here, Petitioner has failed to offer any justification for his failure to
12 previously exhaust the claims in question. Accordingly, he has failed to establish good
13 cause to stay and abey his petition.

14 Therefore, the Court having considered the R&R, Petitioner’s objections, and the
15 remaining record, does hereby find and order as follows:

- 16 (1) The R&R is **ADOPTED**;
- 17 (2) Petition’s motion is **DENIED**; and
- 18 (3) The matter is referred to Judge Creatura for consideration of the petition.

19 Dated this 29th day of July, 2020.

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BENJAMIN H. SETTLE
United States District Judge